PRIVATE SECURITIES LITIGATION/Sanctions for Abusive Litigation

SUBJECT: **Private Securities Litigation Reform Act of 1995 . . . S. 240. D'Amato motion to table the Specter amendment No. 1483.**

ACTION: MOTION TO TABLE AGREED TO, 57-38

SYNOPSIS: As reported with an amendment in the nature of a substitute, S. 240, the Private Securities Litigation Reform Act, will enact changes to current private securities litigation practices in order to discourage unjust suits and to provide better information and protection from fraud for investors.

The Specter amendment would strike the section that will require a judge to review, upon final adjudication of a securities action, each party's and attorney's compliance with Rule 11(b) of the Federal Rules of Civil Procedure, and to punish any violations by a party of that rule by making it pay the other party's attorney's fees and costs, unless it could be proven that the violation was de minimis or unduly burdensome (in which case the court would set the appropriate punishment). The Specter amendment would instead require the court to examine any abusive litigation practices brought to its attention and would leave it to the court's discretion whether it would impose sanctions under Rule 11(b) or any other authority of the court. (Rule 11(b) states that any pleading, written motion, or other paper presented to a court: may not be presented for any improper purpose, such as harassment or delay; must be legally sound; must have evidentiary support for any factual contentions or a likelihood that such support will be found; and must have evidence or a reasonable basis for any denials of factual contentions. Rule 11(c) permits a court to impose sanctions for violating Rule 11(b).)

Debate was limited by unanimous consent. Following debate, Senator D'Amato moved to table the Specter amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

No arguments were expressed in favor of the motion to table.

Those opposing the motion to table contended:

(See other side)

YEAS (57)

Republicans (42 or 82%)		Democrats (15 or 34%)
Abraham	Helms	Breaux
Ashcroft	Hutchison	Conrad
Bennett	Inhofe	Daschle
Brown	Kempthorne	Dodd
Burns	Kyl	Exon
Campbell	Lott	Feinstein
Chafee	Lugar	Ford
Coats	Mack	Hollings
Cohen	McCain	Lieberman
Coverdell	McConnell	Mikulski
Craig	Murkowski	Murray
D'Amato	Nickles	Nunn
Domenici	Pressler	Reid
Faircloth	Santorum	Robb
Frist	Shelby	Rockefeller
Gorton	Simpson	
Gramm	Smith	
Grams	Thomas	
Grassley	Thompson	
Gregg	Thurmond	
Hatfield	Warner	

NAYS (38)

Republicans (9 or 18%)	Democrats (29 or 66%)	
DeWine	Akaka	Heflin
Dole	Baucus	Inouye
Hatch	Biden	Kennedy
Jeffords	Bingaman	Kerrey
Packwood	Boxer	Kerry
Roth	Bradley	Kohl
Snowe	Bryan	Lautenberg
Specter	Bumpers	Leahy
Stevens	Byrd	Levin
	Dorgan	Moseley-Braun
	Feingold	Moynihan
	Glenn	Pell
	Graham	Sarbanes
	Harkin	Simon
		Wellstone

NOT VOTING (4)

Republicans (2)	Democrats (2)
Cochran-[2]	Johnston-[2]
Kassebaum-[2]	Pryor-[2]

VOTING PRESENT(1)
Bond

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

The bill's substitute provision on mandatory punishment is unfair to plaintiffs and is opposed by most Federal judges. We surveyed Federal judges to find their opinion of this provision, and found that they overwhelmingly oppose it as legislative micromanagement that will make their jobs more difficult. Their complaints include that it will greatly increase their review of cases, because most cases currently are not reviewed because they do not involve abusive litigation, that it will force judges into an accusatory, rather than a neutral, role because it will make them look for abuses and then impose sanctions (instead of the current system in which they rule only on abuses that have been alleged), and that it will result in a large increase in collateral litigation. The other reason for opposing the provision is that it will be unfair to plaintiffs. Plaintiffs typically do not have the resources that large companies do. In a court case, a large company will typically spend millions of dollars defending itself. If we adopt as a rebuttable presumption that one party must pay the other party's legal fees if a judge determines that it was guilty of an abusive litigation practice, companies will of course increase their allegations of such practices. Defendants will be much more leery of filing legitimate suits if they know they may then be stuck with a several million dollar penalty. For corporations, on the other hand, the punishment is not equal, because plaintiffs, with their more limited means, spend much less on suits. Thus, this amendment tilts the scales of justice in favor of the accused. We think it is fairer to keep the scales balanced. Accordingly, we have proposed the Specter amendment, which would leave it up to the judges whether they would impose sanctions. This practice, which is current law, is preferable. We therefore oppose the motion to table.